

Randy and Cheryl Gilchrist

293061

3010 Lake Keowee Lane
Seneca, SC 29672

July 24, 2020

The Honorable Jocelyn G. Boyd
Chief Clerk / Executive Director
Public Service Commission of South Carolina
101 Executive Center Drive, Suite 100
Columbia, SC 29210

RECEIVED

JUL 31 2020

PSC SC
MAIL / DMS

Re: Randy and Cheryl Gilchrist v. Duke Energy Carolinas, LLC
Docket No. 2020-147-E

Dear Ms. Boyd:

Enclosed for filing please find Randy and Cheryl Gilchrist's second Objection to Defendant Duke Energy Carolinas, LLC's Motion to Dismiss and plaintiff's Demand for Hearing dated July 24, 2020. By copy of this letter we are serving the same on the parties of record.

Sincerely,

Randy & Cheryl Gilchrist
Cheryl Gilchrist

Randy and Cheryl Gilchrist

Cc: Duke Energy via Attorneys for Duke Energy Carolinas, LLC via U.S. mail at
Robinson Gray Stepp & Laffitte, LLC, P.O. Box 11449, Columbia, SC 29211
Mr. David Stark, Hearing Examiner, Public Service Commission of South Carolina
101 Executive Center Drive, Suite 100, Columbia, SC 29210
Alexander W. Knowles, Esq., Office of Regulatory Staff of South Carolina, via email
Carri Grube Lybarker, SC Dept. of Consumer Affairs, Counsel, via email
Roger P. Hall, SC Dept. of Consumer Affairs, Counsel, via email

Enc.: Objection and Demand for Hearing

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2020-147-E

IN RE:

Randy and Cheryl Gilchrist,
Complainants/Petitioners,

v.

Duke Energy Carolinas, LLC's
Defendant/Respondent.

CERTIFICATE OF SERVICE

This is to certify that I, Randy Gilchrist, one of the plaintiffs in this case, have served upon the persons named below our second Objection to Defendant Duke Energy Carolinas, LLC's Motion to Dismiss and Plaintiff's Demand for Hearing by electronic mail or by depositing in the U.S. Mail, addressed as follows:

Alexander W. Knowles, Counsel
SC Office of Regulatory Staff
1401 Main Street, Suite 900
Columbia, SC 29201
aknowles@ors.sc.gov

The Honorable Jocelyn G. Boyd
Chief Clerk / Executive Director
Public Service Commission of
South Carolina
101 Executive Center Drive
Suite 100
Columbia, SC 29210

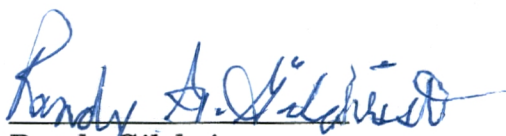

Mr. David Stark, Hearing Examiner
PSC of SC, 101 Executive Ctr. Dr.
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Robinson Gray Stepp & Lafitte, LLC
P.O. Box 11449
Columbia, SC 29211
Attorneys for Duke Energy Carolinas LLC

Dated July 24, 2020


Randy Gilchrist


BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2020-147-E

IN RE:

Randy and Cheryl Gilchrist, Complainants/Petitioners, v. Duke Energy Carolinas, LLC's Defendant/Respondent.]]]]]]]]]]]]	Randy and Cheryl Gilchrist's Objection to Defendant Duke Energy Carolinas, LLC's Motion to Dismiss and Plaintiff's Demand for Hearing
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Plaintiffs, Randy and Cheryl Gilchrist, object to the Motion to Dismiss of Defendant Duke Energy Carolinas, LLC, (hereinafter "DEC" or "Company") dated July 20,2020 on the following grounds:

The purpose of any government agency, commission, or administrative law proceeding is the protection of persons and property. A hearing in this case is necessary for the protection of substantial rights, and is therefore in the public interest. Dismissal of the plaintiff's petition without a hearing is not appropriate under South Carolina Code Ann. § 58-27-1990.

FACTS OF THE CASE

The plaintiffs had repeatedly informed DEC that they did not consent to the installation of any meter capable of capturing data other than what is necessary to

bill for services rendered. We repeatedly informed the Company that we were refusing the installation of a smart meter for the following reasons:

a) the meter collects personal, private data that is not necessary to determine the amount of electricity used for billing purposes, and b) residents of the home have medical conditions that could be exacerbated by the smart meter.

The plaintiffs repeatedly informed the Company that they in fact have a right to privacy and that the Company did not obtain their consent for the installation of this meter, and proceeded to threaten plaintiffs with disconnect of their power if they did not comply with the Company's demands. Plaintiffs also informed the Company that they were not required to Opt-Out because the Company was engaging in unlawful activity.

ARGUMENT

DEC (the Company) claims that they have not violated any applicable statute or regulation for which the Commission can grant relief, claiming that a hearing in this case is not in the public interest or for the protection of substantial rights. The plaintiffs vehemently disagree and submit the following:

- 1) DEC in its July 20, 2020, response to our complaint asserts that they have offered plaintiffs an opportunity to "opt out." What they should be offering their customers is an opportunity to opt in...this after fully informing their customers of the true nature of the meter's capabilities and the uses of the information collected. There is no question that the smart meters collect and store data well beyond what is necessary for billing purposes. This data is the

personal, private property of the plaintiffs. The Company has no right or authority to force anyone to allow them to collect that data under threat of disconnection of service for noncompliance. The Company cites “S.C. Code Ann. § 58-3-140(A)” as their regulatory authority. The Company claims that “[i]t is indisputable that the replacement of an analog meter ... is well within the scope of these grants of authority.” The plaintiffs dispute that claim. The Commission cannot grant authority that violates our Constitutional protections. The Commission in fact takes an oath of office, S. C. Code of Laws, Title 58, Ch. 3, Sec. 58330, to support and defend our Constitutions, both State and Federal. Any regulations that violate those Constitutions are null and void. All courts – and that includes Administrative Courts – are bound by those Constitutions. The U. S. Supreme Court said:

Constitutional provisions for the security of person and property are to be liberally construed, and “it is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon.” *Byars v. U.S.*, 273 U.S. 28, 32 (1927)

The South Carolina Code of Laws, Sec. 16, Ch. 5, entitled *Offences Against Civil Rights*, Sec. 16510, *Conspiracy against civil rights* reads:

It is unlawful for two or more persons to band or conspire together or go in disguise upon the public highway or upon the premises of another with the intent to injure, oppress, or violate the person or property of a citizen because of his political opinion or his expression or exercise of the same or attempt by any means, measure, or acts to

hinder, prevent, or obstruct a citizen in the free exercise and enjoyment of any right or privilege secured to him by the Constitution and laws of the United States or by the Constitution and laws of this State.

- 2) The Company claims to be “authorized” by the Commission to engage in acts that are unlawful and claims that because they are not a “state actor” that the Company does not need to comply with the constitutions of our state and federal governments. We disagree, and furthermore, this puts the Commission (which is a state actor) in a precarious position. Thus, the Commission either needs to inform the Company that they must comply with Constitutional provisions that protect the privacy and property of their customers, or write regulations that explicitly state the same.

The Company cites Commission regulation 103-320 that provides “meters shall be furnished by the utility.” This does not mean that the Company can use any meter – specifically smart meters – that collect and store data which is the personal, private property of the plaintiffs, and which is not necessary for billing purposes, regardless of any “benefits” the Company claims are yielded. The Company is not allowed to violate plaintiffs’ rights to their property because it’s “convenient.” In order for the placement of smart meters to be lawful, the Company must fully inform their customers of the capabilities of the meters and the uses of the information these meters collect. And,

the Company must obtain the informed consent of the customer.

Without such informed consent, the Company is committing unlawful acts with the installation of every smart meter. If the Commission sanctions the Company's actions, then the Commission, as a state actor, may be liable for damages caused by the Company.

The issue is not about whether DEC is a state actor. The issue is whether DEC can hide behind regulations/statutes to commit unlawful acts. The issue is also whether the Commission, the Public Service Commission of South Carolina (hereinafter the "PSC") has in fact authorized DEC to commit these unlawful acts. The plaintiffs contend that regulations promulgated by the PSC do not in fact authorize or excuse illegal activity.

The constitutions of both the United States of America and the State of South Carolina protect the privacy of the individual. The company is prohibited from collecting personal, private data without first obtaining informed consent of their customers. The Company is required to obtain a customer's consent to install these devices (smart meters) and they cannot penalize or refuse to provide service to customers who do not consent.

The Company did in fact trespass (a Common Law tort) when they entered the plaintiffs' property and installed the smart meter over the plaintiffs' objections. The Company cites S.C. Code Ann. Regs. 103-344, which provides that "[a]uthorized agents of the electrical utility shall have the right of access to premises supplied with electric service ... and for any other purpose which is proper and necessary in the

conduct of the electrical utility's business." The plaintiffs contend that the purpose was neither proper nor necessary in order to provide electric service.

The plaintiffs' objections to the violation of the right to privacy, which these meters represent, are neither vague nor unspecified. The Company's assertion that the complainants' privacy assertions can only be asserted against state actors is not the issue here. The issue here is that a state agency (the PSC) that regulates the Company (DEC) is in existence to hear complaints of the Company's unlawful activities and to step in and correct the situation.

CONCLUSION

Again, it is the duty – and even the reason for the existence – of the PSC to protect the persons and property of the people of the State of South Carolina from reckless and unlawful activities that may be engaged in by the companies they regulate. As the Company admits on page 6 of their motion to dismiss dated July 8, 2020, "...there is no state law requiring the installation of smart meters". There exists no state law because it would be ruled unconstitutional. Every state and every administrative law court, and every government agency, federal and state down to city and county government is bound by the Federal and State Constitutions. The plaintiffs' complaint and request for a hearing in this case is in fact in the public interest and for the protection of substantial rights. These substantial rights include the Fourth Amendment to the U.S. Constitution which protects the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures.

The following cases are relevant to the substantial rights involved in this case:

Miranda v. Arizona, 384 U.S. 436, 491:

“Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them.”

Gomillion v. Lightfoot, 364 U.S. 155 (1966), cited also in *Smith v. Allwright*, 321 U.S. 644, 649:

“Constitutional ‘rights’ would be of little value if they could be indirectly denied.”

Davis v. Wechsler, 263 US 22, at 24:

“The assertion of federal rights, when plainly and reasonably made, is not to be defeated under the name of local practice.”

Hertado v. California, 110 U.S. 516:

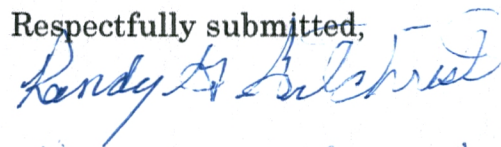
“The State cannot diminish rights of the people.”

Because the PSC is charged with regulating the activities of DEC, plaintiffs believe and have shown that the Company is engaged in activities that are actionable under the Common Law, as well as Statutory Law. These are substantial rights that the PSC is charged to protect, and it is therefore in the public interest that this complaint be heard.

WHEREFORE, the plaintiffs demand that DEC's Motion to Dismiss be denied and a hearing be scheduled as soon as reasonably possible, and request such other relief as the Commission deems just and proper.

Dated July 24, 2020

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Randy Gilchrist".A handwritten signature in blue ink, appearing to read "Cheryl Gilchrist".

Randy and Cheryl Gilchrist
3010 Lake Keowee Lane
Seneca, SC 29672